

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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FAUN O'NEEL, individually and as
Guardian Ad Litem for her
children B.T., A.O., D.O., and
A.T.,

Plaintiffs,

v.

CITY OF FOLSOM, a public entity;
SPENSER HEICHLINGER, an
individual; MELANIE CATANIO, an
individual; LOU WRIGHT, an
individual; DOE CITY OF FOLSOM
DEFENDANTS, individuals; KERYN
STARKS, an individual; SASHA
SMITH, an individual; COUNTY OF
SACRAMENTO, a public entity; DOE
DCFAS DEFENDANTS, individuals;
and DOES 1 through 10,
inclusive,

Defendants.

No. 2:21-cv-02403 WBS DB

MEMORANDUM AND ORDER RE:
COUNTY OF SACRAMENTO, SASHA
SMITH, AND KERYN STARKES'
MOTION FOR SUMMARY JUDGMENT

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Plaintiff Faun O'Neel, individually and as guardian ad
litem for her children B.T., A.O., D.O., and A.T, brought this \$
1983 action alleging that defendants' removal of her four

1 children violated, inter alia, their Fourteenth Amendment right
2 to familial association. (Second Am. Compl. ("SAC") (Docket No.
3 49).) Donnie Cox was subsequently appointed guardian ad litem
4 for the four children on February 23, 2022. (Docket No. 9.)
5 Defendants County of Sacramento, Sasha Smith, and Keryn Starkes
6 now move for summary judgment. (Docket No. 80.)

7 I. Factual and Procedural Background

8 Plaintiff Faun O'Neel is the mother of child plaintiffs
9 A.T., D.O., A.O., and B.T. (See Docket No. 93 at 56.) Danny
10 O'Neel, not a party to this matter, is Faun O'Neel's husband and
11 the children's stepfather. (See id.)

12 On December 20, 2020, D.O. left out food that the
13 family's dog got into and made a mess in the kitchen, and Faun
14 O'Neel disciplined D.O. (See Sealed Detention Report at 3-4.)
15 Following this incident, D.O. told his sister B.T. that his
16 mother choked him with both hands and carried him by the neck.
17 (See Defs.' Statement of Undisputed Facts ("SUF") (Docket No. 80-
18 1) ¶ 5.) B.T. then called 911 concerning D.O.'s choking
19 allegation. (Id. ¶ 6.)¹

20 Folsom Police Department officers responded to the 911
21 call and interviewed the children. (See Docket No. 93 at 48-51.)
22 The officers left without removing the children from the home.
23 (See Pls.' Statement of Material Facts ("SMF") ¶ 11.) Two days
24 later, on December 22, 2020, Officer Melanie Catanio removed the
25

26 ¹ Faun O'Neel maintained that she only grabbed D.O. by
27 the back of the neck to get him to comply with her order to clean
28 up the food and did not choke him or pick him up by the neck.
(See Docket No. 93 at 16.) D.O. later recanted the choking
allegation. (See SUF ¶ 80.)

1 four children from the home without a warrant, and thereafter
2 interviewed the two older children, B.T. and A.O., at the Folsom
3 Police Department. (SUF ¶ 11.) During her interview, A.O. made
4 additional allegations that the parents physically punished both
5 D.O. and herself, including smacking in the face and hitting with
6 a belt. (Id. ¶¶ 14-16.) Following the interviews, the children
7 were placed in the custody of the County of Sacramento Child
8 Protective Services Department ("CPS"). (See id. ¶ 18.)

9 Keryn Starkes and Sasha Smith are social workers
10 employed by CPS who were assigned to the O'Neel case. (See id.
11 ¶¶ 43-50.) Sasha Smith was Keryn Starkes' supervisor. (See id.
12 ¶ 20; SMF ¶ 36.)

13 Pursuant to a safety plan agreed upon by Starkes, the
14 O'Neel parents, and maternal grandmother Fara Canutt on December
15 24, 2020, the children were placed into the custody of Canutt at
16 the family home, while the parents were to live in a different
17 location and were permitted to have supervised visitation. (See
18 SUF ¶¶ 21-23.) The safety plan also required that the parents
19 refrain from attempting to influence what the children said to
20 law enforcement. (See id. ¶ 23.)

21 On January 8, 2021, Starkes filed petitions to have the
22 children declared dependents of the Juvenile Court pursuant to
23 California Welfare & Institutions Code § 300. (See id. ¶ 47.)
24 That same day, Starkes also prepared and submitted a warrant
25 application² for the removal of all four children pending a

26 ² While separate applications were submitted for each
27 child, the substantive content of the applications was identical.
28 (See SMF ¶ 26.) The court will therefore use the singular
"application."

1 hearing on the § 300 petitions, pursuant to Welfare &
2 Institutions Code § 340(b)(2). (See id. ¶ 45.) The warrant
3 application was granted by a judge the same day. (Id.) The
4 children were then placed into CPS custody. (See Sealed
5 Detention Report at 2.)

6 A detention hearing was held on January 14, 2021. At
7 the hearing, a different judge determined that CPS had made a
8 prima facie case that the children satisfied the criteria of §
9 300 due to a risk of physical abuse. (SUF ¶¶ 70-72.) At a
10 dispositional hearing on February 1, 2021, that judge sustained
11 the § 300 petitions by a preponderance of the evidence and
12 adjudged the children as dependent children of the Juvenile
13 Court. (Id. ¶ 74.) The court ordered the mother and children to
14 reside in the same home as the parental grandparents until
15 further order of the Court. (Id.) The children's dependency
16 status was terminated on July 22, 2021. (Id. ¶ 75.)

17 II. Legal Standard

18 Summary judgment is proper "if the movant shows that
19 there is no genuine dispute as to any material fact and the
20 movant is entitled to judgment as a matter of law." Fed. R. Civ.
21 P. 56(a). A party may move for summary judgment either for one
22 or more claims or defenses, or for portions thereof. Id.

23 The moving party typically bears the initial burden of
24 establishing the absence of a genuine issue of material fact and
25 may satisfy this burden by presenting evidence that negates an
26 essential element of the non-moving party's case. See Celotex
27 Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). However, summary
28 judgment must be entered "against a [non-moving] party who fails

1 to make a showing sufficient to establish the existence of an
2 element essential to that party's case, and on which that party
3 will bear the burden of proof at trial." See id. Any inferences
4 drawn from the underlying facts must be viewed in the light most
5 favorable to the non-moving party. See Matsushita Elec. Indus.
6 Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

7 III. Discussion

8 As relevant here, plaintiffs' third claim, brought
9 against defendants Starkes and Smith, alleges judicial deception
10 in the warrant application in violation of plaintiffs'
11 constitutional right to familial association. The seventh claim
12 alleges that Starkes and Smith are liable for false imprisonment
13 based on false representations made in the warrant application.
14 The sixth claim alleges that the County of Sacramento is liable
15 pursuant to Monell v. Department of Social Services of City of
16 New York, 436 U.S. 658 (1978).³

17 A. Judicial Deception

18 "The interest of parents in the care, custody, and
19 control of their children is perhaps the oldest of the
20 fundamental liberty interests recognized by the Supreme Court."

22 ³ The first and second claims were brought against the
23 other defendants (Catania, Wright, and City of Folsom), who have
since settled. (See Docket No. 96.)

24 Plaintiffs' opposition brief indicates that they have
25 "elect[ed]" not to pursue the fourth and fifth claims, which
allege judicial deception in other documents filed with the
26 Juvenile Court. (See Opp'n (Docket No. 88) at 7.) Plaintiffs
27 further represent that they "will submit a dismissal of the
Fourth and Fifth Claims." (Id.) Plaintiffs have not yet filed a
28 pleading voluntarily dismissing these claims. However, based on
plaintiffs' clear intention to abandon them, the court will
dismiss the fourth and fifth claims.

1 David v. Kaulukukui, 38 F.4th 792, 799 (9th Cir. 2022) (cleaned
2 up). “[A]s part of the right to familial association, parents
3 and children have a ‘right to be free from judicial deception’ in
4 child custody proceedings and removal orders.” Id. at 800.

5 “To support a § 1983 claim of judicial deception, a
6 plaintiff must show that the defendant deliberately or recklessly
7 made false statements or omissions that were material to the
8 finding of probable cause.” Greene v. Camreta, 588 F.3d 1011,
9 1034-35 (9th Cir. 2009), vacated in part on other grounds, 661
10 F.3d 1201 (9th Cir. 2011).

11 Under California law, “a warrant to remove a child
12 prior to a hearing cannot issue absent a showing of probable
13 cause to believe that ‘[t]here is a substantial danger to the
14 safety or to the physical or emotional health of the child’ and
15 ‘[t]here are no reasonable means to protect the child's safety or
16 physical health without removal.’” Scanlon v. County of Los
17 Angeles, 92 F.4th 781, 805 (9th Cir. 2024) (quoting Cal. Welf. &
18 Inst. Code § 340(b)(2)-(3)).

19 In the context of a judicial deception claim, “[a]
20 misrepresentation or omission is ‘material’ if a court ‘would
21 have declined to issue the order had [the defendant] been
22 truthful.’” David, 38 F.4th at 801 (quoting Greene, 588 F.3d at
23 1035) (alteration in original). “Whether a false statement was
24 ‘material’ to the finding of probable cause is a question of law
25 for the reviewing court.” Greene, 588 F.3d at 1035; see also
26 Chism v. Washington State, 661 F.3d 380, 389 (9th Cir. 2011)
27 (materiality is a “purely legal question”). But see Scanlon, 92
28 F.4th at 802 (treating materiality as issue to be determined by

1 "reasonable trier of fact," but not addressing whether
2 materiality is a factual or legal question).

3 1. Smith

4 It is undisputed that Starkes was responsible for the
5 preparation of the warrant application. (See SUF ¶ 45.) Smith,
6 Starkes' supervisor, did not sign the warrant application. (See
7 Docket No. 93 at 74.) As far as the court can discern, Smith's
8 only involvement with the warrant application was her review of
9 it in her capacity as Starkes' supervisor. (See Keryn Starkes
10 Dep. at 61:21-22, 135:20-136:14; Sasha Smith Dep. at 74:11-75:7.)
11 It appears that Smith did not review the underlying evidence or
12 documentation. (See SUF ¶ 56; Sasha Smith Dep. at 78:2-17.)

13 The parties have not identified any evidence in the
14 record that suggests Smith had reason to doubt the accuracy of
15 the representations made by Starkes' warrant application.
16 Moreover, plaintiffs have not identified, and the court is
17 unaware of, any authority holding that a supervisor must review
18 the underlying evidence or documentation for a warrant
19 application prepared by her subordinate. "Omissions or
20 misstatements resulting from negligence or good faith mistakes
21 will not invalidate an affidavit which on its face establishes
22 probable cause," and "a claim of judicial deception [may not] be
23 based on an officer's erroneous assumptions about the evidence he
24 has received." Ewing, 588 F.3d at 1224; see also Motley v.
25 Parks, 432 F.3d 1072, 1081 (9th Cir. 2005), overruled on other
26 grounds by United States v. King, 687 F.3d 1189 (9th Cir. 2012)
27 ("law enforcement officers are generally entitled to rely on
28 information obtained from fellow law enforcement officers").

1 Smith's reliance on Starkes' representations thus cannot form the
2 basis for a judicial deception claim. See Ewing, 588 F.3d at
3 1224. Accordingly, the court will grant summary judgment on the
4 third claim in favor of defendant Smith.

5 2. Starkes

6 As stated above, defendant Starkes drafted the warrant
7 application. Plaintiffs advance several theories concerning
8 Starkes' alleged judicial deception in the warrant application.

9 a. Failure to Review SAFE Interviews

10 It is undisputed that Starkes relied on the
11 representations of Officer Catanio and Dominique Smith concerning
12 the content of the SAFE interviews, rather than reviewing the
13 SAFE interview recordings or transcripts. Plaintiffs argue that
14 this constitutes reckless disregard for the truth. They take
15 issue with two representations or omissions that Starkes relied
16 upon: first, Catanio and Dominique Smith's failure to inform her
17 of the fact that D.O. recanted the choking allegation during the
18 interview; and second, their representations that the children
19 had been coached prior to their interviews in violation of the
20 safety plan.

21 Catanio, who observed the interviews (see SUF ¶ 28),
22 sent an email received by Dominique Smith and Starkes (see id. ¶¶
23 40, 42) conveying her conclusion that the children had
24 "clear[ly]" been coached on "what to say, and . . . what not to
25 say," in violation of the safety plan, such that the "integrity
26 of the [SAFE] interviews was completely compromised" (Docket No.
27 93 at 66). One of Dominique Smith's Case Management System
28 ("CMS") entries also indicates generally that the safety plan was

1 not followed. (See Dominique Smith Dep. at 71:18-24.) Dominique
2 Smith's CMS entries do not indicate that D.O. recanted the
3 choking allegation during his SAFE interview, nor does Catanio's
4 email concerning the interviews. (See Dominique Smith Dep. at
5 68:23-70:4; Docket No. 93 at 66.) Starkes relied upon these
6 representations in drafting the warrant application. (See Docket
7 No. 93 at 73.)

8 It is true that Starkes knew about the SAFE interviews
9 prior to filing the warrant application and failed to review the
10 recordings or transcripts. (See SUF ¶ 26; SMF ¶ 20.) However,
11 the interviews were not requested by Starkes in the first place
12 (see SUF ¶¶ 24-26), and there is no indication that she felt
13 review of the interviews necessary to acquire adequate
14 information from the children. More importantly, there is
15 nothing in the record indicating that Starkes had reason to doubt
16 the accuracy of Officer Catanio and Dominique Smith's
17 representations to her concerning the SAFE interviews. See
18 Motley, 432 F.3d at 1081 ("law enforcement officers are generally
19 entitled to rely on information obtained from fellow law
20 enforcement officers"); Kastis v. Alvarado, No. 1:18-cv-01325 DAD
21 BAM, 2019 WL 3037912, at *10 (E.D. Cal. July 11, 2019) ("An
22 assertion is made with reckless disregard when 'viewing all the
23 evidence, the affiant must have entertained serious doubts as to
24 the truth of his statements or had obvious reasons to doubt the
25 accuracy of the information he reported.'" (quoting Wilson v.
26 Russo, 212 F.3d 781, 788 (3d Cir. 2000)). Her failure to review
27 additional information concerning the SAFE interviews thus
28 constitutes, at most, mere "negligence or good faith mistakes"

1 that do not sustain a judicial deception claim. See Ewing, 588
2 F.3d at 1224.

3 b. Failure to Investigate Further

4 Plaintiffs also argue that D.O.'s representation that
5 his mother picked him up and carried him around by the neck was
6 so unbelievable that it should have prompted Starkes to further
7 investigate the incident. D.O.'s description certainly strains
8 credulity, especially given that there were no marks on his neck
9 following the incident and he was twelve years old at the time.
10 (See SMF ¶¶ 2-3, 7, 12; Docket No. 93 at 69.) Plaintiffs contend
11 that Starkes should have therefore conducted further
12 investigation -- for example by (1) reviewing the audio
13 recordings of the children's interviews with Folsom Police, (2)
14 reviewing the photos taken of D.O. that showed no visible marks
15 or bruising on his neck (in addition to evidence already before
16 her that indicated there were no marks), or (3) further
17 questioning Faun O'Neel (in addition to the interview Starkes had
18 already conducted) -- and that her failure to do so constitutes
19 reckless disregard for the truth.

20 This argument is unavailing, particularly because the
21 warrant application did include Faun O'Neel's alternative
22 description of the December 20, 2020 incident, according to which
23 she only "grabb[ed] [D.O.] by the back of the neck," but did not
24 choke him or pick him up by the neck. (See Docket No. 93 at 71.)
25 Further, there is no indication that the specific avenues of
26 investigation identified by plaintiffs were so plainly necessary
27 that failure to pursue them constitutes reckless disregard for
28 the truth. Cf. Butler v. Elle, 281 F.3d 1014, 1025 (9th Cir.

1 2002) (where warrant was issued for failure to maintain vehicle
2 title, officer's failure to search title database under
3 defendant's legal name and business name, which were known to
4 officer, could support claim for judicial deception).

5 It is possible that the investigation methods
6 identified by plaintiffs may constitute "best practices." (See,
7 e.g., Sasha Smith Dep. at 79:9-16 (indicating that reviewing
8 photos referenced in a police report prior to writing a warrant
9 application is a practice social workers "should" follow).) But
10 a failure to abide by best practices does not rise to the level
11 of judicial deception. As with Starkes' failure to review the
12 SAFE interviews, her failure to investigate the case in the
13 particular manner plaintiffs dictate constitutes, at most, mere
14 negligence that cannot support a judicial deception claim. See
15 Ewing, 588 F.3d at 1224.

16 Additionally, it is not clear that further avenues of
17 investigation concerning the choking incident would have yielded
18 information that, if included, would have been material. As
19 discussed in greater detail below, the choking incident was not
20 the only ground for the warrant. Even if the choking allegation
21 was excluded, the court cannot say as a matter of law that the
22 warrant would not have been granted.

23 c. Omissions from Warrant Application

24 Finally, plaintiffs point to Starkes' omission of
25 several pieces of information that were known to her, including
26 that (1) the safety plan allegedly did not require that the
27 parents have only one hour of supervised virtual visitation every
28 other day, and therefore the parents were not in violation of the

1 visitation provision by having frequent in-person visitation (see
2 Decl. of Faun O'Neel (Docket No. 88-1 at 94-100) ¶ 27; Decl. of
3 Fara Canutt (Docket No. 88-1 at 90-92) ¶ 4); (2) D.O. told
4 Starkes he felt safe at home and wanted to remain with his mother
5 (SMF ¶ 12); (3) D.O. gave varying descriptions of the part of the
6 incident in which his mother pushed his face either "into" or
7 "towards" the food spilled on the ground (see SMF ¶ 34; Docket
8 No. 93 at 14); (4) D.O. had no physical marks or bruises (see SMF
9 ¶ 2); and (5) the police did not remove the children when they
10 first responded to the home and interviewed the children on
11 December 20, 2020, but rather came back to remove the children
12 two days later (see SMF ¶ 11; SUF ¶ 11).

13 Even if these pieces of information may tend to be
14 exculpatory, they are overshadowed by the specific allegations of
15 physical abuse against multiple children in the home, which are
16 far more salient to the finding of probable cause. According to
17 the warrant application, D.O. and A.O. "reported history of being
18 physically abused by the mother and the father, which included
19 being choked, spanked with a belt, and slapped in the face"; B.T.
20 "reported being concerned that her mother would hurt her siblings
21 again when she gets angry," particularly D.O. and A.O., who "get
22 more severe punishments . . . including getting hit and pushed";
23 and A.O. "stated that when her mother gets overly mad, she gets
24 smacked, pushed and spanked with a belt" and that "her last
25 spanking by her father was last September or October 2020" (mere
26 months before the December 2020 incident), which left her with
27 "marks and bruises on her legs and her arms." (See Docket No. 93
28 at 70-72; SUF ¶ 52.)

1 Accordingly, the court concludes that the alleged
2 omissions were immaterial. Even if the facts pointed to by
3 plaintiffs had been included, the judge most likely would still
4 have granted the warrant based on these allegations, which were
5 not "made misleading by the omission" of the facts relied upon by
6 plaintiffs such that the warrant application "considered as a
7 whole, [was] materially misleading." See Scanlon, 92 F.4th at
8 799.

9 This conclusion is bolstered by the outcome of the
10 detention hearing, where the plaintiffs were each represented by
11 counsel and a different judge concluded CPS had made a prima
12 facie case that the children met the criteria of Welfare &
13 Institutions Code § 300. The judge there had before him a fuller
14 factual and procedural record, along with D.O.'s statement that
15 he felt safe at home and wanted to remain at home, and CPS's
16 representation that the only violation of the safety plan was the
17 family's alleged coaching of the children prior to interviews.
18 (See SUF ¶¶ 58-69.) In ruling, the judge stated: "I find that
19 removal of all the children is appropriate, based on allegations
20 of physical abuse. One to [D.O.], but also a report of
21 allegations that there is physical abuse to [A.O.] that occurred
22 prior to this. The allegations seem to suggest this is not an
23 isolated incident that just happened to [D.O.], but this is
24 something that's been ongoing in the family, at least to two
25 children." (Id. ¶ 70.)

26 As plaintiffs point out, the legal standard applied at
27 the warrant application stage is different than the standard
28 under § 300. In particular, the warrant required that, in

1 addition to making a showing of abuse or neglect under § 300,
2 there were "no reasonable means to protect the child's safety or
3 physical health without removal" pending hearing on the § 300
4 petitions. See Scanlon, 92 F.4th at 805 (quoting Cal. Welf. &
5 Inst. Code § 340(b)(2)-(3)). While the judge's conclusion at the
6 detention hearing that CPS has made a prima facie showing under §
7 300 is not equivalent to a finding of probable cause, the outcome
8 of that hearing does make clear that the allegations of a history
9 of excessive corporal punishment against multiple children would
10 have been important at any stage of the case.

11 Based on the foregoing, the court concludes that there
12 is no genuine dispute of material fact tending to show that
13 Starkes committed judicial deception in the warrant application.
14 Accordingly, the court will grant summary judgment on the third
15 claim in favor of defendant Starkes.

16 B. Qualified Immunity

17 Even if any or all of the allegedly false statements in
18 the warrant application or the alleged omissions from that
19 application were found to constitute judicial deception,
20 defendants would still be entitled to qualified immunity on
21 plaintiffs' Fourteenth Amendment claim unless plaintiffs could
22 establish that defendants acted in violation of clearly
23 established law, such that any reasonable officer in the
24 officers' position would understand that their conduct violated
25 plaintiffs' constitutional rights. See Pearson v. Callahan, 555
26 U.S. 223, 232 (2009) ("Qualified immunity is applicable unless
27 the official's conduct violated a clearly established
28 constitutional right."); Saucier v. Katz, 533 U.S. 194, 202

1 (2001) ("The relevant, dispositive inquiry in determining whether
2 a right is clearly established is whether it would be clear to a
3 reasonable officer that his conduct was unlawful in the situation
4 he confronted.")

5 It may be clearly established that an officer may not
6 make statements in a juvenile dependency petition that he knew to
7 be false or would have known to be false if he had not recklessly
8 disregarded the truth. See Greene, 588 F.3d at 1035; David, 38
9 F.4th at 800 (stating that "the right to be free from judicial
10 deception in matters of child custody is beyond debate.").
11 However, the Supreme Court has cautioned us not to define the law
12 at such a high level of generality in defining what is clearly
13 established. See City of Escondido, Cal. v. Emmonds, 586 U.S.
14 38, 42 (2019). In order for the making of such false statements
15 to constitute a Fourteenth Amendment violation the statements
16 must have been material. In other words, it is not enough that a
17 defendant may have made one or more false statements or omitted
18 one or more facts from a petition. The statement or omission may
19 support a judicial deception claim only if the allegedly deceived
20 court would have declined to issue the order had the statements
21 not been made or the omitted facts been included. See David, 38
22 F.4th at 801.

23 Accordingly, in determining qualified immunity the more
24 appropriate inquiry is whether the officer made false statements
25 which he knew to be materially false or would have known to be
26 materially false if he had not recklessly disregarded the truth.
27 And with regard to the alleged omissions the appropriate inquiry
28 is correspondingly whether the officer intentionally or with

1 reckless disregard for the truth omitted material facts.

2 In the context of a judicial deception claim,
3 materiality is a question which must be determined by the
4 reviewing court in each instance on a case-by-case basis. See
5 Chism, 661 F.3d at 389. Here, this court has determined that
6 none of the alleged misrepresentations or omissions, considered
7 individually or collectively, were material because they did not
8 influence the Juvenile Court Judge in his decision. But suppose
9 this court had held otherwise and determined that one or more of
10 the alleged misrepresentations were made with knowledge they were
11 false and were material. Would that conclusion have been clear
12 to any officer in the position of Starkes? The court concludes
13 it would not, and that a reasonable officer in Starke's position
14 could well have believed that the Juvenile Court Judge would
15 still have issued the detention order even if the allegedly false
16 statements were omitted and the omitted facts were included in
17 the petition.

18 It must not be forgotten that juvenile dependency
19 petitions and the applications for protective custody warrants
20 are typically drafted under exigent circumstances and often
21 considered and granted by a judge the same day they are
22 submitted. CPS officials cannot be expected to include every
23 fact that may or may not be potentially exculpatory in a
24 protective custody warrant application. They are not required to
25 provide a comprehensive recitation of every detail of the
26 investigation up to that point. The warrant application need
27 only include sufficient information to ensure that the facts
28 presented are not "so wrenched from [their] context that the

1 judicial officer will not comprehend how [they] fit[] into the
2 larger puzzle.” See Scanlon, 92 F.4th at 799. Officials need
3 only provide an adequately complete representation of the “total
4 story” so as to not be “materially misleading.” See id.
5 (emphasis added).

6 Plaintiffs have been unable to point to any case,
7 either at the Supreme Court or circuit level, which would have
8 placed Starkes on notice that she could not rely upon the
9 information provided to her by other social workers or law
10 enforcement officers in drafting her application to the court.
11 Much to the contrary, prevailing caselaw suggests they may do so.
12 See Motley, 432 F.3d at 1081. Nor have plaintiffs been able to
13 identify any caselaw to even suggest to Starkes that she had a
14 constitutional obligation to conduct a further investigation
15 under the circumstances. See Ewing, 588 F.3d at 1224.

16 As the Supreme Court has taught us, qualified immunity
17 protects “all but the plainly incompetent or those who knowingly
18 violate the law.” Malley v. Briggs, 475 U.S. 335, 341 (1986).
19 There is nothing in the record to permit an inference that
20 defendants here were either plainly incompetent or knowingly
21 violated the law. Accordingly, even if the court were to
22 conclude that defendants’ conduct violated the Fourteenth
23 Amendment, at the very least they would be entitled to qualified
24 immunity.

25 C. False Imprisonment

26 Plaintiffs allege that Starkes and Smith committed
27 false imprisonment through their misrepresentations in the
28 warrant application. Defendants do not address the elements of a

1 false imprisonment claim, but rather argue that the social
2 workers' communications with the Juvenile Court are privileged
3 under California Civil Code § 47.

4 Section 47 "establishes a privilege that bars liability
5 in tort for the making of certain statements. Pursuant to
6 section 47(b), the privilege bars a civil action for damages for
7 communications made '[i]n any (1) legislative proceeding, (2)
8 judicial proceeding, (3) in any other official proceeding
9 authorized by law, or (4) in the initiation or course of any
10 other proceeding authorized by law and reviewable pursuant to
11 [statutes governing writs of mandate].'" Hagberg v. California
12 Fed. Bank, 32 Cal. 4th 350, 360 (2004) (quoting Cal. Civ. Code §
13 47(b)) (alterations in original).

14 Plaintiffs argue that defendants are not immune from
15 tort claims pursuant to section 47 if they satisfy the conditions
16 of California Government Code § 820.21(a), which provides:
17 "Notwithstanding any other provision of the law, the civil
18 immunity of juvenile court social workers, child protection
19 workers, and other public employees authorized to initiate or
20 conduct investigations or proceedings . . . shall not extend to"
21 (1) "perjury," (2) "fabrication of evidence," (3) "failure to
22 disclose known exculpatory evidence," and (4) "obtaining
23 testimony by duress," when any of these acts are "committed with
24 malice." "Malice" is defined as "conduct that is intended by the
25 person . . . to cause injury to the plaintiff," or "despicable
26 conduct that is carried on . . . with a willful and conscious
27 disregard of the rights or safety of others." Id. at §
28 820.21(b).

1 Plaintiffs are correct in that "[t]he language of
2 section 820.21 includes 'notwithstanding any other provision of
3 law' which makes it clear that section 47 cannot be interpreted
4 without consideration of section 820.21." See Parkes v. County
5 of San Diego, 345 F. Supp. 2d 1071, 1085-86 (S.D. Cal. 2004).

6 Plaintiffs contend that if they have established a
7 genuine issue of material fact as to judicial deception, they
8 have also done so with respect to the exception to immunity under
9 section 820.21. However, as discussed above, the court concludes
10 that the record presents no genuine dispute of material fact
11 tending to show that Smith or Starkes engaged in judicial
12 deception based on any false representations or omissions. There
13 is thus likewise no dispute of fact as to whether they fabricated
14 evidence or failed to disclose exculpatory evidence with malice.

15 Section 820.21 therefore does not apply to Smith and
16 Starkes, and they are immune from the false imprisonment claim
17 pursuant to the section 47 litigation privilege. Cf. id. at 1086
18 (because "there is a genuine issue of material fact as to whether
19 [defendants] failed to disclose to the court exculpatory evidence
20 with malice . . . [defendants] are not entitled to summary
21 judgment based on the section 47(b) litigation privilege").
22 Accordingly, the court will grant summary judgment in defendants'
23 favor on the seventh claim.

24 D. Municipal Liability

25 "To sustain their Monell claim, [plaintiffs] must show
26 that the action that caused their constitutional injury was part
27 of an 'official municipal policy of some nature.'" Scanlon, 92
28 F.4th at 811 (quoting Monell, 436 U.S. at 691)). The existence

1 of such a "policy" may be shown in several ways, including by (1)
2 "prov[ing] the existence of a widespread practice that, although
3 not authorized by written law or express municipal policy, is so
4 permanent and well settled as to constitute a custom or usage
5 with the force of law," City of St. Louis v. Praprotnik, 485 U.S.
6 112, 127 (1988) (plurality opinion) (citation and internal
7 quotation marks omitted), or (2) demonstrating that the
8 municipality failed to adequately train employees so as to avoid
9 the constitutional violations that occurred, see City of Canton,
10 Ohio v. Harris, 489 U.S. 378, 388 (1989).

11 Plaintiffs allege that the County of Sacramento is
12 liable based on (1) a "take one, take all" policy whereby CPS
13 automatically removes all children from a home even if "only one
14 [child] is the subject of allegations which might justify
15 removal" (SAC ¶¶ 159-60); (2) inadequate training or supervision
16 of social workers with respect to the constitutional rights that
17 must respected in the course of removal proceedings (id. ¶¶ 153-
18 55); and (3) a longstanding practice of improperly removing
19 children without probable cause by engaging in judicial deception
20 (id. ¶¶ 158, 167).

21 The parties have not identified any evidence in the
22 record concerning the "take one, take all" policy. To the
23 court's knowledge, the only evidence concerning the training of
24 County social workers indicates that social workers are trained
25 to be honest in their dealings with the juvenile courts and
26 respect families' constitutional rights. (See Dominique Smith
27 Dep. at 37:06-12; Starkes Dep. at 40:08-41:11; Docket No. 88-1 at
28 104-11.)

1 In support of their allegation of a longstanding
2 practice of judicial deception, plaintiffs cite three cases
3 brought against the County of Sacramento wherein social workers
4 were alleged to have engaged in judicial deception. However,
5 these cases do not constitute evidence the court can rely upon.
6 Two of them settled prior to summary judgment. (See Henao v.
7 County of Sacramento, 2:22-cv-00352 MCE KJN, Docket Nos. 24-29;
8 Welch v. County of Sacramento, 2:07-cv-00794 GEB EFB, Docket Nos.
9 14-35.) Olvera v. County of Sacramento, 2:10-cv-550 WBS KJM,
10 made it to summary judgment, but the court only determined that
11 there was a dispute of material fact as to whether the social
12 workers engaged in judicial deception, see 932 F. Supp. 2d 1123,
13 1165 (E.D. Cal. 2013) (Shubb, J.), and the case settled before
14 trial (see Olvera Docket Nos. 208-221).

15 Plaintiffs also provide declarations from Joseph Henao
16 and Jonathan Welch (see Docket No. 88-1 at 11-15, 124-27), the
17 plaintiffs in the Henao and Welch matters cited above.
18 Plaintiffs stated in their opposition that these witnesses were
19 “disclosed in Rule 26 statements,” but do not provide
20 documentation to support that assertion. (See Opp’n at 29.) In
21 reply, defendants provided a copy of plaintiffs’ Rule 26 initial
22 disclosures, which do not disclose Mr. Henao and Mr. Welch. (See
23 Docket No. 103-3 at 13-22.)

24 “If a party fails to provide information or identify a
25 witness as required by Rule 26(a) or (e), the party is not
26 allowed to use that information or witness to supply evidence on
27 a motion, at a hearing, or at a trial, unless the failure was
28 substantially justified or is harmless.” Fed. R. Civ. Proc.

1 37(c)(1). As plaintiffs have shown neither that the witnesses
2 were properly disclosed nor that any failure to disclose was
3 justified or harmless, the court cannot consider the declarations
4 of Mr. Henao and Mr. Welch. See Merch. v. Corizon Health, Inc.,
5 993 F.3d 733, 740 (9th Cir. 2021) ("Rule 37(c)(1) is an
6 'automatic' sanction that prohibits the use of improperly
7 disclosed evidence," which litigants can "escape . . . only if
8 they prove that the discovery violations were substantially
9 justified or harmless") (quoting Yeti by Molly, Ltd. v. Deckers
10 Outdoor Corp., 259 F.3d 1101, 1106 (9th Cir. 2001)).⁴

11 Because there is no evidence before the court to
12 support any of plaintiffs' Monell theories, the court will grant
13 summary judgment in favor of defendant County of Sacramento on
14 the sixth claim.

15 IT IS THEREFORE ORDERED that defendants' motion for
16 summary judgment be, and the same hereby is, GRANTED in favor of
17 defendants on the third claim for judicial deception, sixth claim
18 under Monell, and seventh claim for false imprisonment.

19 IT IS FURTHER ORDERED that, based on plaintiffs'
20 abandonment of the claims, the fourth and fifth claims alleging
21 judicial deception in other court filings are hereby DISMISSED.

22 Dated: April 18, 2024



23 **WILLIAM B. SHUBB**
24 **UNITED STATES DISTRICT JUDGE**

25
26 _____
27 ⁴ At oral argument, plaintiffs' counsel stated that he
28 failed to disclose the declarants in accordance with Rule 26 and
conceded that it would be improper for the court to consider
their declarations.